

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JUL 15 1998

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KHAMMOUK NAMPHENGSONE,

Defendant - Appellant.

No. 97-3079

(District of Kansas)

(D.C. No. 94-10122-01)

ORDER AND JUDGMENT*

Before **PORFILIO, KELLY**, and **HENRY**, Circuit Judges.

Khammouk Namphengsone appeals his conviction and sentence after a guilty plea. After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. We exercise jurisdiction under 28 U.S.C. § 1291 and order the case submitted without oral

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

argument.

The government charged Mr. Namphengsone with robbery (a violation of 18 U.S.C. § 1951) and carrying or using a firearm during a robbery during which a murder was committed (a violation of 18 U.S.C. § 924(i)(1)). After Mr. Namphengsone pleaded guilty to both counts, the government filed a motion for downward departure pursuant to § 5K1.1 of the United States Sentencing Guidelines. The district court granted the motion and sentenced Mr. Namphengsone to concurrent terms of imprisonment of 240 months on Count 1 and 264 months on Count 2.

In this appeal, Mr. Namphengsone's attorney has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Mr. Namphengsone's attorney states that the appeal presents no non-frivolous legal questions for review. He declares that Mr. Namphengsone entered a valid plea of guilty and that Mr. Namphengsone's sentence was lawfully imposed.

Upon the filing of the Anders brief, this court afforded Mr. Namphengsone an opportunity to respond. No response has been received from him.

We agree with Mr. Namphengsone's counsel and the government. The record establishes that Mr. Namphengsone entered into the guilty plea knowingly and voluntarily and in compliance with Fed. R. Crim. P. 11 and that the district

court properly determined his sentence.

Accordingly, we grant the motion to withdraw filed by Mr. Namphengsone's counsel and affirm Mr. Namphengsone's conviction and sentence.

Entered for the Court

Robert H. Henry
Circuit Judge